

2 Phil. 142

[ G.R. No. 1244. April 18, 1903 ]

**LA COMPAÑA GENERAL DE TABACOS, PLAINTIFF AND APPELLEE, VS. MIGUEL TUPINO ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**WILLARD, J.:**

The motion of the appellee that the bond presented by the defendants for the purpose of staying the execution of the judgment be “completed,” must be denied.

This bond as originally presented by the defendants was approved by the court below. There is no evidence before us showing any change in reference to the bond or the persons who signed it, except a written statement addressed by one of the signers to the clerk of the court below, in which he said that he withdrew from the bond. This writing did not in any way affect the bond and did not release this surety from liability thereon.

*Arellano, C. J., Torres, Cooper, Mapa, and Ladd, JJ., concur.*

**WILLARD, J.:**

The order of the court allowing the bill of exceptions is as follows:

“The attached bill of exceptions is allowed, and the clerk is directed to file it Avith the record, and, in accordance with section 143 of the Code of Civil Procedure, to immediately certify to said bill and all documents therein mentioned as integral parts thereof, as well as such matters as the adverse party may desire to add thereto, and to transmit the whole to the Supreme Court”

Pursuant to this order the appellee has caused to be sent here, with the bill of exceptions, a mass of loose papers certified by the clerk. The appellant now moves this court that all of

these papers be stricken from the bill of exceptions.

1. Among the papers transmitted at the request of the appellee is a bill of exceptions and accompanying documents which relate exclusively to the granting of, and the denial of, a motion to dissolve a preliminary injunction. This bill of exceptions was prepared by the defendants, the present appellants. They have not seen fit to prosecute it, and have in fact abandoned it.

We hold that it can not be considered as a part of the other bill of exceptions, which the defendants do see fit to prosecute, for the purpose of reversing the final judgment in the case. None of these papers should therefore be printed.

2. The eighty defendants in the case answered separately. These answers are all alike. The appellants have attached a copy of one of them to the bill of exceptions and this bill will be printed. The appellee has caused copies of the seventy-nine other answers to be sent here and asks that they be printed. It may perhaps be said that they should be considered as a part of the bill of exceptions, for the purpose of showing that these defendants in fact appeared and answered. But it is not necessary to print them. They may remain as a part of the bill of exceptions added by the appellee, under the order of the court above quoted, but the clerk is hereby ordered not to print any of them.
3. The bond given by the defendants to stay the execution and the motion and affidavits relating thereto are no part of the bill of exceptions, and will not be printed.
4. The other papers in the case will be printed as a part of the bill of exceptions, without now passing upon their materiality. This we can not do in advance of a hearing of the case.
5. We have decided this motion without reference to the form in which the papers have been prepared and remitted to this court, which has been very irregular.

(1) It is irregular for the judge to sign a bill of exceptions with a statement that the appellee may add thereto such papers as lie desires.

A judge should not sign a bill of exceptions until it appears to him that the adverse party has been duly notified of the presentation of the bill. If the adverse party appears, the judge should not sign the bill of exceptions until such party has suggested specifically the amendments and additions which he desires made, and until the judge has decided whether they shall be granted or denied, and until he has stated specifically in the bill of exceptions what amendments and additions are allowed.

(2) The clerk should not have sent here, as he did, a mass of loose papers. The bill of exceptions transmitted by the clerk should consist of a single document, which he certifies to be the bill of exceptions in the case, with the papers referred to therein. So ordered.

*Arellano, C. J., Torres and Ladd, JJ., concur.*

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DISSENTING

**COOPER, J.:**

A mass of loose papers certified to by the clerk of the Court of First Instance has been sent to this court as a part of the bill of exceptions, under a clause of the order of the court allowing the bill of exceptions which directs the clerk "to certify to said bill and all documents therein mentioned as integral parts thereof, *as well as such matters as the adverse party may desire to add thereto*, and to transmit the whole to the Supreme Court."

Under this order seventy-nine answers of defendants in the court below have been certified and sent here. The appellant moves that they be not printed, and that these papers be stricken from the bill of exceptions.

The order of this court directs that these papers shall not be printed as a part of the bill of exceptions, but permits them to remain as a part of it.

While it is stated that it is irregular for the judge to sign the bill of exceptions with the statement that the appellee may add thereto such papers as he desires, still this court permits them to remain as part of the bill of exceptions. Such practice is not only irregular, as stated by the court, but the documents under this part of the order form no part of the bill of exceptions and should be stricken out on motion, or, if no such motion is made, they should be disregarded at the hearing of the case.

I concur in the opinion so far as the motion not to print these papers is sustained, but dissent from that part of the order which permits them to remain as part of the bill of exceptions.

